

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 09-05141 MHP

NATALIE MARTEL,

Plaintiff,

v.

MICHAEL J, ASTRUE, Commissioner of
Social Security,

Defendant.

MEMORANDUM & ORDER

Re: Defendant's Motion to Strike

Having exhausted her administrative remedies, plaintiff Natalie Martel seeks judicial review, pursuant to 42 U.S.C. section 405(g), of a final decision of defendant Michael J. Astrue, Commissioner of Social Security ("Commissioner"). Martel alleges that she was improperly denied Supplemental Security Income benefits. Having considered the parties' arguments and for the reasons stated below, the court enters the following memorandum and order granting defendant's motion to strike and dismissing without prejudice plaintiff's complaint for lack of prosecution.

BACKGROUND

On October 29, 2009, plaintiff filed this action seeking judicial review of defendant's final decision rendered on April 8, 2009. *See* Docket No. 1 (Complaint). Notice of Service upon defendant was filed on June 12, 2010 and, in support of her action, plaintiff's counsel subsequently filed three declarations purporting to proffer evidence that the Administrative Law Judge ("ALJ") presiding over plaintiff's case was generally biased against claimants. *See* Docket Nos. 15-17. The

1 declarations reference two other social security actions involving clients of plaintiff's counsel and
2 presided over by the same ALJ who plaintiff now apparently argues was biased against her.
3 Plaintiff's counsel avers that the declarations and exhibits show that the ALJ similarly harbored bias
4 against these other two clients. Defendant now moves to strike these declarations and exhibits,
5 arguing that they are immaterial to the instant action pursuant to Federal Rules of Civil Procedure
6 12(f).

7 8 LEGAL STANDARD

9 Under Rule 12(f), a court may strike from the pleadings "any insufficient defense or any
10 redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "The function of a
11 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating
12 spurious issues by dispensing with those issues prior to trial." *Whittlestone, Inc. v. Handi-Craft Co.*,
13 618 F.3d 970, 973 (9th Cir. 2010) (internal quotation marks and citations omitted).

14 15 DISCUSSION

16 Plaintiff correctly points out that Rule 12(f) applies only to pleadings. *See Sidney-Vinstein v.*
17 *A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983) ("Under the express language of the rule, only
18 pleadings are subject to motions to strike."). Plaintiff's declarations and exhibits were not submitted
19 in conjunction with any pleading. Accordingly, defendant's motion to strike is improperly brought
20 under Rule 12(f). Nonetheless, plaintiff's submissions are not probative of her claims in this action
21 that "(1) the Commissioner's actions, findings and conclusions were not supported by substantial
22 evidence and (2) incorrect legal standards were employed in the determination of the ultimate
23 issues." Docket No. 1 (Complaint) ¶ 4. Indeed, plaintiff alleges no bias in her initial complaint,
24 rendering the declarations and exhibits in question, purporting to show bias, irrelevant to the inquiry
25 here. Accordingly, defendant's motion to strike is GRANTED.

26 In addition, plaintiff has failed to follow the order of the court and to timely prosecute her
27 action. Subject to Civil L.R. 16-5, as in effect on the date that plaintiff filed her complaint, plaintiff
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1 was required to file a motion for summary judgment or for remand within thirty (30) days of service
2 of defendant's answer. *See* Docket No. 3 (Procedural Order for Social Security Review Actions) ¶ 2.
3 Defendant filed his answer on September 8, 2010, *see* Docket No. 12 (Answer), and plaintiff has yet
4 to file a motion for summary judgment or for remand. Accordingly, plaintiff's action is
5 DISMISSED without prejudice pursuant to Federal Rule of Civil Procedure 41(b), which allows for
6 the dismissal of an action for failure of a plaintiff to prosecute or to comply with a court order. Fed.
7 R. Civ. P. 41(b).

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9 CONCLUSION

10 Defendant's motion to strike is GRANTED. Plaintiff's complaint is DISMISSED without
11 prejudice.

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13 IT IS SO ORDERED.

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15 Dated: May 17, 2011

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19 MARILYN HALL PATEL
20 United States District Court Judge
21 Northern District of California
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